

AMENDED IN SENATE JUNE 19, 2006

AMENDED IN SENATE APRIL 26, 2006

AMENDED IN SENATE APRIL 18, 2006

AMENDED IN ASSEMBLY MAY 2, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 402

Introduced by Assembly Member Dymally

February 15, 2005

An act to add ~~Section 2013 to~~ *Sections 2013, 3022.3, and 3022.4 to*, the Family Code, relating to family law.

LEGISLATIVE COUNSEL'S DIGEST

AB 402, as amended, Dymally. Family law court: marriage.

Existing law establishes procedures related to proceedings for dissolution of marriage, nullity of marriage, and legal separation, as specified.

This bill would enact the Collaborative Family Law Act, which would allow the parties to those proceedings, by written agreement, to utilize a collaborative law process, as specified, ~~to resolve those disputes, rather than through an adversarial judicial proceeding to resolve those disputes.~~ The bill would deem any statement, communication, or work product ~~made or arising during from or made in the course of~~ the process, except any written agreement entered into by the parties ~~and prepared by their collaborative law attorneys,~~ confidential and inadmissible in any noncriminal proceeding, except by written agreement to the contrary by the parties ~~and prepared by their collaborative law attorneys,~~ and would prohibit the court from

intervening during that time. If the process terminates without settlement, the bill would then require each party to hire new counsel or represent themselves in any further proceeding, and would require the court to set a case management conference for any petition previously filed, if any.

The bill would also require a court to issue a statement explaining the factual and legal basis for its custody decision upon the trial of a question of fact in a proceeding to determine the custody of a minor, upon the request of either party.

The bill would also require the Judicial Council to create an information sheet for parties involved in child custody and visitation matters, as specified, on or before January 1, 2008.

The bill would also describe the penalties authorized for a violation of a custody order.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. This act shall be known and may be cited as the
- 2 Collaborative Family Law Act.
- 3 SEC. 2. Section 2013 is added to the Family Code, to read:
- 4 2013. (a) If a written agreement is entered into by the parties
- 5 and their attorneys, the parties may utilize a collaborative law
- 6 process to resolve any matter governed by this code over which
- 7 the court is granted jurisdiction pursuant to Section 2000.
- 8 (b) "Collaborative law process" means the process in which
- 9 the parties and their attorneys agree in writing to use their best
- 10 efforts and to make a good faith attempt to resolve disputes
- 11 related to family law matters as referenced in subdivision (a) on
- 12 an agreed basis without resorting to adversary judicial
- 13 intervention, except to file the initial petition and response,
- 14 stipulated orders or judgments, and accompanying documents as
- 15 may be required under this code, or to have the court approve the
- 16 settlement agreement, make the legal pronouncements, and sign
- 17 the orders required by law to effectuate the agreement of the
- 18 parties as the court determines appropriate. The parties' attorneys
- 19 may not serve as litigation counsel, except to ask the court to
- 20 approve the settlement agreement.

(c) If neither party files an initial petition for proceedings pursuant to one of the issues listed in subdivision (a), at any time during the collaborative law process the parties may agree in writing to set jurisdiction over all issues to be heard by a court of competent jurisdiction retroactive to any date as far back as the date the parties entered into the collaborative law agreement.

~~(d) Sections 1115 to 1128~~ *Section 703.5 of the Evidence Code regarding competency of witnesses shall include and apply to collaborative law attorneys and any other professional involved in the collaborative law process.*

(e) Sections 1118 to 1124, inclusive, of the Evidence Code, regarding confidentiality protections on information exchanged in mediation, shall also apply to collaborative law proceedings, including, but not limited to, the following:

(1) All statements, communications, and work product ~~made or arising from or made in the course of~~ a collaborative family law case are confidential and are inadmissible in any arbitration, administrative adjudication, civil action, other collaborative law process, or other noncriminal proceeding *in which testimony can be compelled*, except by written agreement to the contrary by the parties ~~and prepared by their collaborative law attorneys.~~

(2) Work product includes, but is not limited to, any written or oral communication between the parties and their attorneys, and written or oral communication, reports, or analysis of any third party professional or expert used in the collaborative law process.

(3) Notwithstanding this subdivision and the confidential nature of the collaborative law process, all written agreements entered into by the parties ~~and prepared by their collaborative law attorneys~~ during the collaborative law process are deemed admissible in court.

~~(e)~~

(4) Anything said, any admission made, or any writing that is inadmissible, protected from disclosure, and confidential under this section before the collaborative law process terminates, shall remain inadmissible, protected from disclosure, and confidential to the same extent after the collaborative process terminates.

(f) For purposes of this section, a collaborative law process terminates when one of the following conditions is satisfied:

(1) The parties execute a written settlement agreement that fully resolves the dispute.

1 (2) Any party provides all other parties and their attorneys
2 with a writing stating that the collaborative law process is
3 terminated or words to that effect. In the event that an initial
4 petition has been filed, a written notice shall also be filed with
5 the court and served on all parties appearing in the action.

6 (3) Any party initiates an adversary judicial intervention.

7 (g) If the collaborative law process terminates without
8 settlement, each party shall seek new counsel or represent
9 himself or herself in order to proceed in litigation. Neither
10 attorney in the collaborative law process may act as litigation
11 counsel for either party.

12 ~~(f)~~

13 (h) Pursuant to paragraph (3) of subdivision ~~(d)~~ (e), all written
14 agreements entered into by the parties ~~and prepared by their~~
15 ~~collaborative law attorneys~~ during the collaborative law process
16 are deemed admissible in court, notwithstanding the termination
17 of the process or the confidential nature of the collaborative law
18 process.

19 ~~(g)~~

20 (i) The collaborative law agreement shall include, but not be
21 limited to, provisions for all of the following:

22 (1) The parties' full compliance with disclosure requirements
23 under Chapter 9 (commencing with Section 2100) and candid
24 exchange of all information between the parties and their
25 attorneys as necessary to make a proper evaluation of the case,
26 including, but not limited to, each party's preliminary declaration
27 of disclosure, income and expense declaration, and schedule of
28 assets and debts, all under penalty of perjury, pursuant to Section
29 2104.

30 (2) Suspending court intervention in the dispute while the
31 parties and their attorneys are using collaborative law procedures
32 requiring court appearances pursuant to local county rules.

33 (3) Provisions for jointly hiring mental health, financial, or
34 other professionals to serve as joint experts to assist the parties in
35 the investigation, evaluation, or resolution of issues, as well as
36 assisting the parties in making informed decisions.

37 (4) Withdrawal of all attorneys *and all other professionals*
38 involved in the collaborative law process if the process does not
39 result in settlement of the dispute.

(5) Expectation that the parties and attorneys shall use their best efforts and good faith to resolve the dissolution of marriage through the collaborative law process.

~~(h)~~

(j) A court that is notified 30 days before trial that the parties are using the collaborative law process to attempt to settle a dispute may not, until a party notifies the court that the collaborative law process did not result in a settlement, do any of the following:

- (1) Set a hearing or trial in the case.
- (2) Impose discovery deadlines.
- (3) Require compliance with pretrial orders.
- (4) Dismiss the case.

~~(i)~~

(k) The parties shall notify the court if the collaborative law process results in a settlement.

~~(j)~~

(l) If the collaborative law process does not result in a settlement on or before two years of the date that the petition was filed, if any, the court may set the matter for a *status* or case management conference *upon request by the parties*.

SEC. 3. Section 3022.3 is added to the Family Code, to read:

3022.3. Upon the trial of a question of fact in a proceeding to determine the custody of a minor child, the court shall, upon the request of either party, issue a statement of the decision explaining the factual and legal basis for its decision pursuant to Section 632 of the Code of Civil Procedure.

SEC. 4. Section 3022.4 is added to the Family Code, to read:

3022.4. (a) Any person who violates an order issued by the family court relating to child custody may be in contempt of court and subject to imprisonment, a fine, or both imprisonment and a fine pursuant to the following provisions:

- (1) Section 1218 of the Code of Civil Procedure.
- (2) Section 278.5 of the Penal Code.

(b) In addition to the penalties described in subdivision (a), a court may take other action within the scope of its authority regarding custody and visitation.

SEC. 5. (a) The Judicial Council shall create an information sheet for parties involved in child custody and visitation matters that informs the parties that they have the right to agree to a

1 custody or visitation arrangement, that if they do not agree, they
2 will be required to participate in child custody mediation, and
3 that if mediation does not result in an agreement, the court will
4 be required to make a determination on the custody issues. The
5 sheet shall also provide information on how to obtain assistance
6 in resolving a custody case, including, but not limited to,
7 information on finding an attorney, including attorneys
8 practicing collaborative law as defined in Section 2013 of the
9 Family Code, information on accessing court based self-help
10 services if they are available, and information regarding other
11 sources of assistance in developing a custodial agreement. The
12 council shall adopt this sheet as a statewide form on or before
13 January 1, 2008, and take reasonable steps to ensure that it is
14 distributed statewide and made available to litigants in custody
15 matters.
16 (b) Funding for creating the notice described in this section
17 shall be derived from existing resources.